

IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

STATE OF ALABAMA, and MORRIS J.
BROOKS, JR., Representative for
Alabama's 5th Congressional District,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
COMMERCE; and WILBUR L. ROSS, in
his official capacity as Secretary of
Commerce; BUREAU OF THE CENSUS,
an agency within the United States
Department of Commerce; and STEVEN
DILLINGHAM, in his official capacity as
Director of the U.S. Census Bureau,

Defendants,

and

DIANA MARTINEZ; RAISA SEQUEIRA;
SAULO CORONA; IRVING MEDINA;
JOEY CARDENAS; FLORINDA P.
CHAVEZ; and CHICANOS POR LA
CAUSA;

COUNTY OF SANTA CLARA,
CALIFORNIA; KING COUNTY,
WASHINGTON; and CITY OF SAN JOSÉ,
CALIFORNIA,

Defendant-Intervenors.

Civil Action No. 2:18-cv-00772-RDP

JOINT STATUS REPORT

In response to the Court's order on July 23, 2019, the parties have conferred and now submit this joint report stating their respective positions regarding how this case should proceed. The parties conferred through telephone conference calls on August 9 and August 14, 2019. Representatives from each party participated in each call.

Plaintiffs' Position

Plaintiffs the State of Alabama and Representative Morris Brooks take the position that discovery on issues of standing and possible remedies should begin promptly. Plaintiffs do not presently anticipate needing discovery on the merits of their claims.

Plaintiffs propose that when standing discovery is complete, the parties submit motions for summary judgment that address both standing and the merits. This approach would allow the Court to resolve all substantive issues in one order, which would also allow standing and merits issues to be addressed in any potential appeal. If after considering summary judgment motions, the Court concludes that material issues of fact exist as to standing, Plaintiffs propose that the Court conduct an evidentiary hearing on standing issues and make findings of fact before resolving the case.

As discussed below, Defendant-Intervenors intend to file motions for judgment on the pleadings. Even if such motions are filed, the parties agree that discovery will proceed while those motions are briefed and argued. Plaintiffs propose that the Court resolve standing before resolving the merits to avoid the possibility that the Plaintiffs lose on the merits before this Court and prevail on the merits on appeal before having to return to this Court to litigate standing to obtain relief.

As discussed below, Defendant-Intervenors have proposed bifurcated discovery—discovery regarding standing would close before discovery regarding the merits. Defendant-Intervenors have also proposed similarly bifurcating motions for summary judgment, with motions

addressing standing being resolved before motions addressing the merits. Plaintiffs do not foresee any need for merits discovery and are opposed to bifurcating motions for summary judgment out of concern it will unnecessarily delay final resolution of this case.

Plaintiffs propose closing the pleadings period shortly after the September 6, 2019 status conference. Martinez-Intervenors propose that the pleadings be closed on October 1, 2019.

Plaintiffs' Proposed Deadlines for Discovery and Dispositive Motions

Event	Plaintiffs' Proposed Date
Initial Disclosures	September 20, 2019
Final Date for Parties to Amend Pleadings or to Join Parties	September 20, 2019 ¹
Deadline for Production of the Federal Administrative Record	October 4, 2019
Deadline to File Motion for Judgment on the Pleadings	October 18, 2019 ²
Discovery Opens	October 18, 2019
Disclosure of Plaintiff's Expert Witnesses	December 6, 2019
Defendants and Intervenors' Expert Rebuttal Disclosures	January 10, 2019
Plaintiff's Expert Reply Disclosures	January 31, 2020

¹ Opposition to any amendment to the pleadings shall be due 21 days after amended pleadings are filed. Reply briefs in support of the amended pleadings shall be due 14 days after the opposition is filed.

² Opposition to the motion for judgment on the pleadings shall be due 28 days after the motion is filed. Reply briefs in support of the motion for judgment on the pleadings shall be due 21 days after the opposition is filed—additional time for the reply to accommodate the Thanksgiving holiday.

Deadline to File Discovery Motions	March 13, 2020
All Discovery (Jurisdictional & Merits) Closes	March 27, 2020
Motions for Summary Judgment Re: Jurisdiction & Merits	April 27, 2020

Defendants' Position³

Defendants propose first producing an administrative record before beginning discovery. Defendants then think there should be discovery regarding standing and possible remedies. Defendants do not believe that any merits discovery is necessary or appropriate. After a more complete record has been created with respect to standing and possible remedies, Defendants anticipate challenging whether Plaintiffs have established sufficient injury and redressability, as well as the related question of whether and, if so, the extent to which Defendants could comply with any Court order regarding remedy.

Defendants propose the following schedule:

Event	Parties' Proposed Date
Initial Disclosures Regarding Standing and Possible Remedies	September 20, 2019
Final Date for Parties to	October 1, 2019 ⁴

³ United States Department of Commerce; Wilbur L. Ross (Secretary of Commerce); Bureau of the Census; and Steven Dillingham (Director of the U.S. Census Bureau).

⁴ Opposition to any amendment to the pleadings shall be due 21 days after amended pleadings are filed. Reply briefs in support of the amended pleadings shall be due 14 days after the opposition is filed.

Amend Pleadings or to Join Parties	
Deadline for Production of the Federal Administrative Record	November 1, 2019
Deadline to File Motion for Judgment on the Pleadings	November 22, 2019 ⁵
Discovery Opens Regarding Standing and Possible Remedies	November 15, 2019
Disclosure of Plaintiffs' Expert Witnesses Regarding Standing and Possible Remedies	January 15, 2020
Defendants and Intervenor's Expert Rebuttal Disclosures Regarding Standing and Possible Remedies	February 19, 2020
Plaintiffs' Expert Reply Disclosures Regarding Standing and Possible Remedies	March 2, 2020
Deadline to File Discovery Motions Regarding Standing and Possible Remedies	April 17, 2020
Discovery Regarding Standing and Possible Remedies Closes	May 1, 2020
Motions for Summary Judgment	June 1, 2020

⁵ Opposition to the motion for judgment on the pleadings shall be due 30 days after the motion is filed. Reply briefs in support of the motion for judgment on the pleadings shall be due 30 days after the opposition is filed—additional time for the reply to accommodate end-of-year holidays.

Martinez Intervenors' Position⁶

The Martinez Intervenors agree that Defendants should produce an administrative record prior to the commencement of discovery. Martinez Intervenors are considering filing a cross claim against Defendants. Martinez Intervenors intend to file a Rule 12(c) motion for judgment on the pleadings. Martinez Intervenors propose allowing discovery to move forward while the Rule 12(c) motion is briefed and argued. Finally, Martinez Intervenors propose two different discovery deadlines, with jurisdictional discovery closing first, followed by briefing on jurisdictional issues, and merits discovery to close later, followed by briefing on the merits if needed.

Martinez Intervenors' Proposed Deadlines for Discovery and Dispositive Motions

Event	Parties' Proposed Date
Initial Disclosures	September 20, 2019
Final Date for Parties to Amend Pleadings or to Join Parties	October 1, 2019 ⁷
Deadline for Production of the Federal Administrative Record	November 1, 2019
Deadline to File Motion for Judgment on the Pleadings	November 22, 2019 ⁸
Discovery Opens	November 15, 2019

⁶ Diana Martinez; Raisa Sequeira, Saulo Corona, Irving Medina, Joey Cardenas, Florinda P. Chavez and Chicanos Por La Causa.

⁷ Opposition to any amendment to the pleadings shall be due 21 days after amended pleadings are filed. Reply briefs in support of the amended pleadings shall be due 14 days after the opposition is filed.

⁸ Opposition to the motion for judgment on the pleadings shall be due 30 days after the motion is filed. Reply briefs in support of the motion for judgment on the pleadings shall be due 30 days after the opposition is filed—additional time for the reply to accommodate end-of-year holidays.

Disclosure of Plaintiff's Expert Witnesses	January 15, 2020
Defendants and Intervenor's Expert Rebuttal Disclosures	February 19, 2020
Plaintiff's Expert Reply Disclosures	March 2, 2020
Deadline to File Discovery Motions on Jurisdiction	April 17, 2020
Jurisdictional Discovery Closes	May 1, 2020
Motions for Summary Judgment Re: Jurisdiction	June 1, 2020

Depending on the outcome of any Motions for Judgment on the Pleadings or Motions for Summary Judgment, the parties may seek another case management conference to set a deadline for discovery on the merits to close, should it be necessary, as well as deadlines for the remainder of litigation.

Local Government Intervenor's Position⁹

The Local Government Intervenor's agree with Defendants that an Administrative Record should be filed before discovery commences. In addition, there should be a Rule 26(f) conference and initial disclosures prior to discovery. For the reasons discussed below, standing discovery should be concluded before merits discovery. But once discovery commences, it should be open as to all issues.

⁹ Santa Clara County, California; King County, Washington; and the City of San Jose, California.

The Local Government Intervenors intend to file a Rule 12(c) motion for judgment on the pleadings. We believe it makes sense to set a schedule through Rule 12(c) motions but not any further at this time and hold an additional scheduling conference after the Rule 12(c) motions are decided. If the Court sets a more comprehensive schedule, we prefer that proposed by the Martinez Intervenors. In any event, Plaintiffs' proposed expert disclosure and discovery cutoff dates are too early to provide for an orderly discovery process including the resolution of any discovery disputes.

Additionally, the Local Government Intervenors believe that summary-judgment motions should not be filed until after the Court decides any Rule 12(c) motions so that the parties have the benefit of the Court's views. We propose summary-judgment motions be filed no earlier than two months after the Court's decision, and possibly longer depending on where discovery stands. We concur with the Martinez Intervenors that any summary-judgment motions should proceed on two tracks: first standing, followed by the merits. This will allow the Court to resolve the contested issue of standing before addressing the merits. We propose that any merits summary-judgment motions be filed no earlier than two months after the Court's disposition of any summary-judgment motions regarding plaintiffs' standing.

September 3, 2019

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Respectfully submitted,

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